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Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

CRIMINAL APPEAL NO. 988 / 2004

4292/04

Filed on 19/11/04
by Shri Yashwant Sahu ..... Advocate

APPELLANT:
(In jail)

Umashanker @ Babloo,
S/o Shri Subramaniyam,
aged about 20 years,
R/o Chunabhatti,
Thana Ganj,
District Raipur (C.G.)

VERSUS

R. to D.R.(J)
19/11/04

RESPONDENT:

State of Chhattisgarh ,
Thorugh P.S.- Ganj,
District Raipur, (C.G.)

MEMO OF APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE 1973 AGAINST THE JUDGEMENT AND CONVICTION DATED 03.06.2004 .

CONVICTION

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

A.F.R.

आदेश पत्रक

मामला क्रमांक C.A. 988/04 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	23.03.2006 Appellant Umashanker @ Babloo by Shri Shyam M. Tekchandani, Advocate. Shri Ashish Shukla, G.A. for the State. Shri Shyam M. Tekchandani, learned counsel for the appellant does not press M.Cr.P.No.1966/2005 for suspension of sentence and grant of bail. Application (M.Cr.P.No.1966/05) is dismissed as not pressed. I.A.No.51/2006 for listing the case out of turn is also disposed since the matter is being heard today. I.A.No.50/2006 for permission to compound the offence is considered today. Arguments are heard. The appellant was convicted in Sessions Case No.315/2003 by the learned 9th Additional Sessions Judge (F.T.C.) Raipur vide judgment dated 3rd June 2004 under sections 307, 324 I.P.C. and Section 25 (1) (b-b) of Arms Act and was sentenced to undergo R.I. for seven years and a fine of Rs.500/-, in default to undergo Additional R.I. for six months under Section 307 I.P.C., to undergo R.I. for one year and a fine of Rs.200/-, in default to undergo additional R.I. for three months under Section 324 I.P.C. and to undergo R.I. for one year and a fine of Rs.200/-, in default to	

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

undergo additional R.I. for three months under Section 25 (1) (b-b) of the Arms Act. The sentences were ordered to run concurrently.

Since the complainant-Balla Yadav, son of Ramlal Yadav is present in court today, he is identified by Shri Shyam M. Tekchandani, counsel for the appellant. Upon verification by the identification mark mentioned in the injury report as also the mark of stab wound at right side of chest lower part, the identity of the person present in Court is established as the person injured. The complainant submits that since there was no previous enmity between them, he has, of his own volition entered into compromise with the accused to ensure good relationship between them in future.

Shri Ashish Shukla, G.A. opposes the application since the offence under Section 307 I.P.C. is not compoundable.

Since the offence under Section 307 I.P.C. is not compoundable, I.A. No.50/2006 for permission to compound the offence is dismissed.

Shri Shyam M. Tekchandani, learned counsel for the appellant submits that he does not wish to press this appeal so far as the conviction of the appellant under Section 324 I.P.C. and 25 (1) (b-b) of Arms Act is concerned and would argue only on the question of sentence awarded under Section 307 I.P.C. He further

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

prays that the arguments may be heard today and this appeal may be disposed of finally. The prayer is not opposed.

The appeal is finally heard today on the question of sentence.

Learned counsel for the appellant submitted that the appellant Umashanker @ Babloo was a young lad of 19 years old on the date of occurrence. He did not have any previous criminal record or any previous enmity with Balla Yadav P.W.4, the injured. The incident in which Balla Yadav was stabbed by the appellant by a knife on the right side of chest at the lower part was an off-shoot of a sudden quarrel and was thus not premeditated. He further submits that only a single blow was caused by the appellant. Lastly placing reliance on a decision rendered by the Apex Court in *Badrilal v. State of M.P.* reported in **(2005) 7 Supreme Court Cases 55**, learned counsel for the appellant submits that in view of the compromise between the parties, the sentence awarded by the trial Judge under Section 307 I.P.C. should be reduced to sentence already undergone by the appellant. On the other hand, Shri Ashish Shukla, learned Government Advocate opposed the prayer and argued that considering the nature of injury sustained by Balla Yadav, it would not be a fit case to reduce the sentence even on the ground of a compromise effected between the parties.

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आदेश का दिनांक आदेश क्रम्पांक सहित	आदेश हस्ताक्षर सहित — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

It is an established fact by the prosecution that on 8.7.2003 at about 4.30 P.M. while Balla Yadav P.W.4 was playing Dice in the house of his neighbour, the appellant upon a sudden quarrel assaulted him by a knife on the right side of chest at the lower part causing an incised wound 2.5 x 0.8 cm right side of chest lower part, anterior to axillary line at about 9th intercostals space. The appellant thereafter also assaulted Laxmi Bai by the knife causing a simple incised injury on the left leg. The evidence led by the prosecution does not show that there was any previous enmity between the appellant and Balla Yadav or that the assault by the appellant by knife on Balla Yadav was premeditated. The testimony of Balla Yadav also shows that after a single assault by a knife by the appellant ~~and~~ no further injury was caused. The appellant was aged about 19 years on the date of occurrence. Balla Yadav P.W.4 was thoroughly questioned by me today to ascertain whether the compromise was of his own volition or not and I am satisfied that the complainant -Balla Yadav has forgiven the appellant for the injury caused to him and has voluntarily entered into a compromise to maintain good relations. Balla Yadav P.W.4 also mentioned that the appellant is just like his brother according to village relationship.

In *Badrilal v. State of M.P.* (2005) 7 S.C.C. 55, the appellant was convicted under Section 307 I.P.C. and was sentenced

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

to R.I. for a period of 10 years. However, on the basis of a joint petition of compromise filed by the parties, the sentence awarded was reduced by the Apex Court to 14 months i.e. the period already undergone by the appellant in that case. In the present case, the appellant is in jail since 25.7.2003. Thus, the appellant has already undergone sentence for a period of two years and eight months. In my considered opinion, in the facts and circumstances of the case and in view of the decision of the Apex Court in Badrilal (supra), the present case is a fit case in which the sentence awarded under Section 307 I.P.C. should be reduced to the period already undergone by the appellant.

In the result, the appeal is partly allowed. Conviction of the appellant under Section 307, 324 I.P.C. and 25 (1) (b-b) of the Arms Act is maintained. The sentence awarded under Section 324 and section 25 (1) (b-b) of the Arms Act as also the sentence of fine awarded under Section 307 I.P.C. are also maintained. However, the substantive sentence of imprisonment awarded under Section 307 I.P.C. is reduced to a period already undergone by the appellant.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani

29.3.06

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